



ARIZONA BOARD OF FINGERPRINTING

Mail Code 185 • Post Office Box 6129 • Phoenix, Arizona 85005-6129
Telephone (602) 265-0135 • Fax (602) 265-6240

Notice of Public Meeting

August 24, 2007, at 9:00 a.m.

3839 North 3rd Street, Suite 101, Phoenix, Arizona

Board Members

Mike LeHew, Department of Economic Security, Chair
Kim Pipersburgh, Department of Health Services, Vice Chair
Rand Rosenbaum, Administrative Office of the Courts
Charles Easaw, Department of Education
Arthur W. Baker, Department of Juvenile Corrections

Executive Director

Dennis Seavers

Under Arizona Revised Statutes ("A.R.S.") § 38-431.02, notice is hereby given to the members of the Arizona Board of Fingerprinting ("board") and to the general public that the board will hold a meeting open to the public as specified below. The board reserves the right to change the order of the agenda.

Individuals who wish to acquire background material provided to board members (with the exception of material relating to possible or previous executive sessions) may request them by contacting Dennis Seavers at (602) 265-0135.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Dennis Seavers at (602) 265-0135. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED AND POSTED THIS 15th day of August 2007 at 12:00 p.m.

Arizona Board of Fingerprinting

By _____
Dennis Seavers, Executive Director

AGENDA

I. CALL TO ORDER AND ROLL CALL Mr. LeHew

II. CALL TO THE PUBLIC Mr. LeHew

At this portion of the meeting, the public is invited to make comments. Arizona law prohibits board members from discussing items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to scheduling the matter for further consideration and decision at a later date.

III. APPROVAL OF MINUTES Mr. LeHew

- A. Minutes from April 20, 2007, meeting
- B. Minutes from May 31, 2007, meeting (including executive-session minutes)
- C. Minutes from June 5, 2007, meeting (including executive-session minutes)
- D. Minutes from June 15, 2007, meeting (including executive-session minutes)

IV. *BAKER CASE* Mr. Seavers

At this portion of the meeting, the board will discuss the case of *Baker v. Board of Fingerprinting*, LC2006-000368-001. To respond to this case, the board may adopt business-process policies. The board may schedule further discussion of this case at a future meeting or request that its staff research possible legislation.

V. DISCUSSION OF IMPACT OF HOUSE BILL 2790 Mr. Seavers

At this portion of the meeting, the board will discuss the possible impact of the 2007 education omnibus reconciliation bill (House Bill 2790). The bill may contain a requirement that all noncertified public-school personnel obtain a fingerprint clearance card. The board may schedule further discussion of this case at a future meeting, or request that its staff propose policies and procedures to cope with the operational impact of the bill or research possible legislation.

VI. REPORTS Mr. Seavers

- A. Fiscal year (“FY”) 2007 budget
- B. FY 2007 strategic plan
- C. Sunset hearing

VII. ADOPTION OF FY 2008 BUDGET Mr. LeHew

VIII. DISCUSSION OF PROPOSED RULES Mr. Seavers

At this meeting, the board will consider proposed changes to the rules. The board will not take action to adopt or modify the rule proposal until a later meeting. The primary purpose of the rule proposal is to respond to the time-frame requirements that will become effective on the General Effective Date.

IX. ELECTIONS FOR CHAIRPERSON AND VICE-CHAIRPERSON Mr. LeHew

Under A.R.S. § 41–619.53(B), the board must elect a chairperson and vice-chairperson annually. At this meeting, the board will take nominations and elect those officers.

X. ADJOURNMENT Mr. LeHew

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000368-001 DT

06/29/2007

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
S. Bindenagel
Deputy

CLYDE R BAKER JR.

CLYDE R BAKER JR.
10435 E PLATA AVE
MESA AZ 85212

v.

ARIZONA STATE BOARD OF
FINGERPRINTING (001)

CHRISTOPHER A MUNNS

OFFICE OF ADMINISTRATIVE
HEARINGS

RULING

The court has had this matter under advisement. It has jurisdiction over this administrative appeal pursuant to the Administrative Review Act, A.R.S. §§ 12-901, *et seq.* The court has considered the record from the administrative proceedings, as well as the memoranda filed by the parties, the arguments presented at the hearing on June 13, 2007, and the supplemental post-hearing memoranda.

Factual and Procedural History

In August of 2005, plaintiff Clyde R. Baker, Jr. submitted an application for a fingerprint clearance card to the Arizona Department of Public Safety ("DPS") as part of the teacher certification program. DPS conducted a state and federal criminal history investigation and discovered a misdemeanor conviction that made Mr. Baker ineligible for a fingerprint clearance card under A.R.S. § 41-1758.03(C). DPS therefore denied Mr. Baker's application.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000368-001 DT

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Mr. Baker requested a good cause exception pursuant to A.R.S. § 41-619.55. An evidentiary hearing was held on February 22, 2006, before hearing officer Dennis Seavers.¹ Mr. Baker testified and presented documentary evidence—including numerous letters of recommendation attesting to his good character. No other witnesses testified. Hearing officer Seavers applied the factors set forth in A.R.S. § 41-619.55(E) and concluded that Mr. Baker had carried his burden of proving that he was not a recidivist and that any necessary rehabilitation had occurred.

The Board reviewed hearing officer Seaver's report at a meeting on May 5, 2006. It voted unanimously to adopt the hearing officer's findings of fact. A motion to adopt Mr. Seaver's conclusions of law failed by a vote of two in favor and three opposed. The Board did not adopt separate conclusions of law at that time. On May 16, 2006, the Board issued a "Determination Regarding Good Cause Exception Application" in which it denied Mr. Baker's application. Mr. Baker thereafter filed a timely complaint for judicial review with this court on June 1, 2006.

On October 19, 2006, the Board filed a "Motion for Limited Remand of Agency Decision for Clarification." Over plaintiff's objection, this court granted the Board's motion, stating, in pertinent part:

Upon review of the Arizona Board of Fingerprinting's Motion for Limited Remand of Agency Decision for Clarification, and good cause appearing, IT IS HEREBY ORDERED that:

1. This matter is remanded to the Arizona Board of Fingerprinting under A.R.S. § 12-911(A)(6) for the limited purpose of clarifying its Conclusions of Law and Decision by means of an amended order remitted to this Court.

The Board entered an Amended Determination Regarding Good Cause Exception Application on January 17, 2007. The Board reaffirmed its adoption of the hearing officer's findings of fact. In its new conclusions of law, the Board stated:

By unanimous vote, the Board amended paragraph 1 of the hearing officer's conclusions of law to delete from the third bullet point the following phrase: "The limited seriousness of the offense was evident from the light sentence. (See 'Findings of Fact,' paragraph 19)."

¹ Hearing officer Seavers also serves as the Executive Director of the Arizona Board of Fingerprinting.
Docket Code 019

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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06/29/2007

By a vote of three in favor and two opposed and based on the serious nature of the offense and the Appellant's failure to demonstrate sufficient responsibility for his actions, the Board amended paragraph 2 of the hearing officer's recommended conclusions of law to read: "The appellant is responsible for demonstrating successful rehabilitation and that he or she is not a recidivist. A.R.S. § 41-619.55(E). Based on the above factors, Appellant has not presented sufficient evidence that he has successfully rehabilitated himself."

By a vote of three in favor and two opposed, the Board's amended paragraph 3 of the hearing officer's recommended conclusions of law to read: "Based on the above, the Board does not have grounds to grant Appellant a good cause exception."

This court heard oral argument on June 13, 2007. It allowed both parties to file supplemental memoranda, which were subsequently received and reviewed.

Analysis

Administrative agencies have no common law or inherent powers. *Ayala v. Hill*, 136 Ariz. 88, 664 P.2d 238 (App. 1983). Their powers and duties are limited to those granted by statute. *Id.* See also *Schwartz v. Superior Court*, 186 Ariz. 617, 925 P.2d 1068 (App. 1996); *Caldwell v. Ariz. State Board of Dental Examiners*, 137 Ariz. 396, 670 P.2d 1220 (App. 1983).

In its supplemental brief, the Board acknowledges that, "statutes and rules do not expressly provide the Board authority to reverse decisions by the hearing officer that find a good cause exception is warranted under A.R.S. § 41-619.55." The court agrees. The Board of Fingerprinting is authorized by neither statute nor rule to review its hearing officer's determination that plaintiff qualified for a good cause exception. *All* of the relevant provisions state that either a hearing officer *or* the Board may make the good cause determination. See, e.g., A.R.S. §§ 41-619.53(A) and (B); 41-619.55(A) ("The board *or* its hearing officer shall determine good cause exceptions."); A.A.C. R13-11-108; A.A.C. R13-11-109(B). In the case at bar, the Board opted to delegate the decision-making power to its hearing officer.² The fact that the Board apparently did so based on an erroneous understanding of its legal authority is largely irrelevant to this court's decision.

Hearing officer Seavers found that Appellant was a credible witness, that he was not a recidivist, and that he had presented substantial evidence of any necessary rehabilitation. This is the final decision under the applicable law, and it must be reinstated.

² Moreover, one of the Board's members -- its Vice Chair -- also attended the evidentiary hearing and was offered the opportunity to question Mr. Baker.

SUPERIOR COURT OF ARIZONA
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Because the court concludes that the Board exceeded its legal authority, it does not reach Mr. Baker's contention that substantial evidence did not support the Board's decision. If it had been required to resolve this issue, though, the court would have expressed serious reservations about the Board's conclusion that Mr. Baker did not qualify for a good cause exception.³

IT IS ORDERED reversing the decision of the Arizona Board of Fingerprinting rejecting plaintiff's good cause exception application.

IT IS FURTHER ORDERED reinstating the hearing officer's determination that Mr. Baker qualifies for a good cause exception. Pursuant to A.R.S. § 41-619.55(F), the Board shall immediately request in writing that the Arizona Department of Public Safety issue a fingerprint clearance card to Clyde R. Baker, Jr.

/s/ Margaret H. Downie
HON. MARGARET H. DOWNIE

³ For future reference, the court notes herein some of its concerns. In discussing Mr. Baker's case, certain Board members repeatedly discussed the "birthday party incident" and impermissibly linked it to the only conduct that was properly before them: the alleged conduct leading to plaintiff's misdemeanor conviction. This discussion and linkage occurred even after the Assistant Attorney General in attendance advised the Board that the birthday party was not at issue and had not been alleged as a basis for concern. One Board member went so far as to criticize Mr. Baker for not admitting alleged errors of judgment regarding the birthday party. Others referenced his purportedly "poor judgment" regarding that event. One Board member also clearly improperly considered matters outside the record – referencing research he had done regarding Mr. Baker's assertions of racial discrimination and referring to such matters in connection with his decision. It is also problematic that no record of the May 5, 2006 Board meeting exists – either by way of minutes or audio recording. Mr. Baker was not allowed to attend that hearing. If the Board itself were conducting a good cause exception hearing, plaintiff's presence was required. A.R.S. § 41-619.55(D)(2).

Arizona Board of Fingerprinting

Budget v. Actual

Fiscal Year 2007

	<u>Apr - Jun 07</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Income				
4900 - Transfers In				
4901 - Operating Transfers In	71,893.00	90,000.00	-18,107.00	79.88%
Total 4900 - Transfers In	71,893.00	90,000.00	-18,107.00	79.88%
FY06 Carryover	0.00			
Total Income	71,893.00	90,000.00	-18,107.00	79.88%
Expense				
6000 - Personal Services				
6010 - Basic Compensation				
6011 - Regular Base Salary	42,319.76	45,384.91	-3,065.15	93.25%
Total 6010 - Basic Compensation	42,319.76	45,384.91	-3,065.15	93.25%
6030 - Exception Compensation				
6028 - 2.5% Performance Pay	1,078.00	1,134.62	-56.62	95.01%
6031 - Overtime	0.00			
Total 6030 - Exception Compensation	1,078.00	1,134.62	-56.62	95.01%
6040 - Leave Compensation				
6041 - Annual Leave	1,090.44			
6042 - Sick Leave	720.41			
6047 - Annual Leave Payout	0.00			
6048 - Holiday Leave Taken	752.57			
6049 - Other Compensated Leave	131.40			
Total 6040 - Leave Compensation	2,694.82			
Total 6000 - Personal Services	46,092.58	46,519.53	-426.95	99.08%
6100 - ERE				
6110 - Insurance				
6111 - FICA	3,484.49	3,403.87	80.62	102.37%
6113 - Medical Insurance	3,414.42	10,476.00	-7,061.58	32.59%
6114 - Basic Life	42.30	42.30	0.00	100.0%
6116 - Long-term Disability	230.52	226.92	3.60	101.59%
6117 - Unemployment Insurance	68.31	68.08	0.23	100.34%
6118 - Dental Insurance	284.94	471.42	-186.48	60.44%
6119 - Worker's Compensation	230.52	226.92	3.60	101.59%
Total 6110 - Insurance	7,755.50	14,915.51	-7,160.01	52.0%
6150 - Retirement Plan Payments				
6155 - ASRS	3,963.97	3,903.10	60.87	101.56%
Total 6150 - Retirement Plan Payments	3,963.97	3,903.10	60.87	101.56%

Arizona Board of Fingerprinting

Budget v. Actual

Fiscal Year 2007

	<u>Apr - Jun 07</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
6180 - Other ERE				
6183 - Personal Services	479.29	453.85	25.44	105.61%
6185 - GITA Charge	69.14	68.08	1.06	101.56%
6186 - Atty. Gen. Pro Rate Chg.	292.67	288.19	4.48	101.56%
6189 - Sick Leave Accumulation	184.35	181.54	2.81	101.55%
Total 6180 - Other ERE	<u>1,025.45</u>	<u>991.66</u>	<u>33.79</u>	<u>103.41%</u>
Total 6100 - ERE	12,744.92	19,810.27	-7,065.35	64.34%
6200 - Prof. & Outside Services				
6210 - Financial Services				
6211 - Bond Issuance Cost	343.75	343.75	0.00	100.0%
Total 6210 - Financial Services	<u>343.75</u>	<u>343.75</u>	<u>0.00</u>	<u>100.0%</u>
6270 - Education & Training				
6271 - Education & Training	0.00			
Total 6270 - Education & Training	<u>0.00</u>			
6290 - Other Prof. & Out. Svcs.				
6299 - Other Prof. & Out. Svcs.	951.50			
Total 6290 - Other Prof. & Out. Svcs.	<u>951.50</u>			
Total 6200 - Prof. & Outside Services	1,295.25	343.75	951.50	376.8%
7000 - Other Operating				
7150 - IT Services				
7153 - Internal Svc. Data Proc.	2,298.63	1,600.00	698.63	143.66%
7172 - External Comm. Long Dist	3,885.51	1,250.00	2,635.51	310.84%
7179 - Other External Comm.	767.82	1,000.00	-232.18	76.78%
Total 7150 - IT Services	<u>6,951.96</u>	<u>3,850.00</u>	<u>3,101.96</u>	<u>180.57%</u>
7200 - Rental Expenditures				
7221 - Rental of Land & Bldgs.	7,194.66	12,500.00	-5,305.34	57.56%
7229 - Miscellaneous Rent	886.11			
Total 7200 - Rental Expenditures	<u>8,080.77</u>	<u>12,500.00</u>	<u>-4,419.23</u>	<u>64.65%</u>
7250 - Repair & Maintenance				
7266 - Repair/Maint-Other Equip	75.18	90.00	-14.82	83.53%
7269 - Repair & Maint (Other)	5,452.71			
Total 7250 - Repair & Maintenance	<u>5,527.89</u>	<u>90.00</u>	<u>5,437.89</u>	<u>6,142.1%</u>
7300 - Operating Supplies				
7321 - Office Supplies	3,232.56	1,500.00	1,732.56	215.5%

Arizona Board of Fingerprinting

Budget v. Actual

Fiscal Year 2007

	<u>Apr - Jun 07</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Total 7300 - Operating Supplies	3,232.56	1,500.00	1,732.56	215.5%
7450 - Conf, Edu, & Traning				
7455 - Conf, Edu, & Train Regis	0.00			
Total 7450 - Conf, Edu, & Traning	0.00			
7470 - Printing & Photography				
7471 - Internal Printing	168.78			
Total 7470 - Printing & Photography	168.78			
7480 - Postage & Delivery				
7481 - Postage & Delivery	4,304.09	2,500.00	1,804.09	172.16%
Total 7480 - Postage & Delivery	4,304.09	2,500.00	1,804.09	172.16%
7500 - Miscellaneous Operating				
7511 - Awards	0.00			
7541 - Books, Subscr., & Pubs.	1,525.00	300.00	1,225.00	508.33%
Total 7500 - Miscellaneous Operating	1,525.00	300.00	1,225.00	508.33%
Total 7000 - Other Operating	29,791.05	20,740.00	9,051.05	143.64%
8500 - Non-capital Equipment				
8520 - Furniture Non-cap				
8521 - Furniture Non-capital	10,226.47			
Total 8520 - Furniture Non-cap	10,226.47			
8550 - EDP Equip PC/LAN Non-cap				
8551 - EDP Equip. Non-cap Purch	9,573.69			
Total 8550 - EDP Equip PC/LAN Non-cap	9,573.69			
8570 - Other Equip. - Non-cap.				
8571 - Other Equip. - Non-cap.	0.00			
Total 8570 - Other Equip. - Non-cap.	0.00			
8580 - Non-capitalized Software				
8583 - PC/LAN Software Non-cap.	2,128.80	200.00	1,928.80	1,064.4%
Total 8580 - Non-capitalized Software	2,128.80	200.00	1,928.80	1,064.4%
Total 8500 - Non-capital Equipment	21,928.96	200.00	21,728.96	10,964.48%
9100 - Transfers out				
9101 - Operating Transfers Out	-6,344.81	6,250.00	-12,594.81	-101.52%
Total 9100 - Transfers out	-6,344.81	6,250.00	-12,594.81	-101.52%

Arizona Board of Fingerprinting

Budget v. Actual

Fiscal Year 2007

	<u>Apr - Jun 07</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Total Expense	<u>105,507.95</u>	<u>93,863.55</u>	<u>11,644.40</u>	<u>112.41%</u>
Net Income	<u><u>-33,614.95</u></u>	<u><u>-3,863.55</u></u>	<u><u>-29,751.40</u></u>	<u><u>870.05%</u></u>

Arizona Board of Fingerprinting

Budget v. Actual

Fiscal Year 2007

TOTAL

	Jul '06 - Jun 07	Budget	\$ Over Budget	% of Budget
Income				
4900 - Transfers In				
4901 - Operating Transfers In	242,449.00	360,000.00	-117,551.00	67.35%
Total 4900 - Transfers In	242,449.00	360,000.00	-117,551.00	67.35%
FY06 Carryover	561,646.52	561,750.30	-103.78	99.98%
Total Income	804,095.52	921,750.30	-117,654.78	87.24%
Expense				
6000 - Personal Services				
6010 - Basic Compensation				
6011 - Regular Base Salary	154,420.98	179,321.77	-24,900.79	86.11%
Total 6010 - Basic Compensation	154,420.98	179,321.77	-24,900.79	86.11%
6030 - Exception Compensation				
6028 - 2.5% Performance Pay	4,163.31	4,483.04	-319.73	92.87%
6031 - Overtime	30.11			
Total 6030 - Exception Compensation	4,193.42	4,483.04	-289.62	93.54%
6040 - Leave Compensation				
6041 - Annual Leave	7,271.29			
6042 - Sick Leave	4,227.96			
6047 - Annual Leave Payout	754.68			
6048 - Holiday Leave Taken	6,936.04			
6049 - Other Compensated Leave	131.40			
Total 6040 - Leave Compensation	19,321.37			
Total 6000 - Personal Services	177,935.77	183,804.81	-5,869.04	96.81%
6100 - ERE				
6110 - Insurance				
6111 - FICA	13,443.11	13,449.14	-6.03	99.96%
6113 - Medical Insurance	13,033.98	37,413.00	-24,379.02	34.84%
6114 - Basic Life	163.56	166.38	-2.82	98.31%
6116 - Long-term Disability	886.01	896.60	-10.59	98.82%
6117 - Unemployment Insurance	266.57	268.98	-2.41	99.1%
6118 - Dental Insurance	1,126.21	1,730.43	-604.22	65.08%
6119 - Worker's Compensation	885.98	896.60	-10.62	98.82%
Total 6110 - Insurance	29,805.42	54,821.13	-25,015.71	54.37%
6150 - Retirement Plan Payments				
6155 - ASRS	15,130.65	15,421.67	-291.02	98.11%
Total 6150 - Retirement Plan Payments	15,130.65	15,421.67	-291.02	98.11%

Arizona Board of Fingerprinting

Budget v. Actual

Fiscal Year 2007

TOTAL

	Jul '06 - Jun 07	Budget	\$ Over Budget	% of Budget
6180 - Other ERE				
6183 - Personal Services	1,857.61	1,793.22	64.39	103.59%
6185 - GITA Charge	259.65	268.98	-9.33	96.53%
6186 - Atty. Gen. Pro Rate Chg.	1,129.86	1,138.69	-8.83	99.23%
6189 - Sick Leave Accumulation	711.68	717.29	-5.61	99.22%
Total 6180 - Other ERE	3,958.80	3,918.18	40.62	101.04%
Total 6100 - ERE	48,894.87	74,160.98	-25,266.11	65.93%
6200 - Prof. & Outside Services				
6210 - Financial Services				
6211 - Bond Issuance Cost	1,375.00	1,375.00	0.00	100.0%
Total 6210 - Financial Services	1,375.00	1,375.00	0.00	100.0%
6270 - Education & Training				
6271 - Education & Training	32.00	32.00	0.00	100.0%
Total 6270 - Education & Training	32.00	32.00	0.00	100.0%
6290 - Other Prof. & Out. Svcs.				
6299 - Other Prof. & Out. Svcs.	3,182.50	15,000.00	-11,817.50	21.22%
Total 6290 - Other Prof. & Out. Svcs.	3,182.50	15,000.00	-11,817.50	21.22%
Total 6200 - Prof. & Outside Services	4,589.50	16,407.00	-11,817.50	27.97%
7000 - Other Operating				
7150 - IT Services				
7153 - Internal Svc. Data Proc.	5,991.03	6,400.00	-408.97	93.61%
7172 - External Comm. Long Dist	9,145.95	5,000.00	4,145.95	182.92%
7179 - Other External Comm.	2,605.81	4,000.00	-1,394.19	65.15%
Total 7150 - IT Services	17,742.79	15,400.00	2,342.79	115.21%
7200 - Rental Expenditures				
7221 - Rental of Land & Bldgs.	16,548.02	39,030.04	-22,482.02	42.4%
7229 - Miscellaneous Rent	1,030.11	200.00	830.11	515.06%
Total 7200 - Rental Expenditures	17,578.13	39,230.04	-21,651.91	44.81%
7250 - Repair & Maintenance				
7266 - Repair/Maint-Other Equip	263.59	360.00	-96.41	73.22%
7269 - Repair & Maint (Other)	5,452.71			
Total 7250 - Repair & Maintenance	5,716.30	360.00	5,356.30	1,587.86%
7300 - Operating Supplies				
7321 - Office Supplies	11,832.50	6,000.00	5,832.50	197.21%

Arizona Board of Fingerprinting

Budget v. Actual

Fiscal Year 2007

TOTAL

	Jul '06 - Jun 07	Budget	\$ Over Budget	% of Budget
Total 7300 - Operating Supplies	11,832.50	6,000.00	5,832.50	197.21%
7450 - Conf, Edu, & Traning				
7455 - Conf, Edu, & Train Regis	890.25			
Total 7450 - Conf, Edu, & Traning	890.25			
7470 - Printing & Photography				
7471 - Internal Printing	168.78			
Total 7470 - Printing & Photography	168.78			
7480 - Postage & Delivery				
7481 - Postage & Delivery	10,950.94	10,000.00	950.94	109.51%
Total 7480 - Postage & Delivery	10,950.94	10,000.00	950.94	109.51%
7500 - Miscellaneous Operating				
7511 - Awards	201.61			
7541 - Books, Subscr., & Pubs.	3,403.10	1,200.00	2,203.10	283.59%
Total 7500 - Miscellaneous Operating	3,604.71	1,200.00	2,404.71	300.39%
Total 7000 - Other Operating	68,484.40	72,190.04	-3,705.64	94.87%
8500 - Non-capital Equipment				
8520 - Furniture Non-cap				
8521 - Furniture Non-capital	10,226.47			
Total 8520 - Furniture Non-cap	10,226.47			
8550 - EDP Equip PC/LAN Non-cap				
8551 - EDP Equip. Non-cap Purch	14,439.93	2,500.00	11,939.93	577.6%
Total 8550 - EDP Equip PC/LAN Non-cap	14,439.93	2,500.00	11,939.93	577.6%
8570 - Other Equip. - Non-cap.				
8571 - Other Equip. - Non-cap.	805.25			
Total 8570 - Other Equip. - Non-cap.	805.25			
8580 - Non-capitalized Software				
8583 - PC/LAN Software Non-cap.	4,579.50	1,600.00	2,979.50	286.22%
Total 8580 - Non-capitalized Software	4,579.50	1,600.00	2,979.50	286.22%
Total 8500 - Non-capital Equipment	30,051.15	4,100.00	25,951.15	732.96%
9100 - Transfers out				
9101 - Operating Transfers Out	3,908.19	29,004.00	-25,095.81	13.48%
Total 9100 - Transfers out	3,908.19	29,004.00	-25,095.81	13.48%

Arizona Board of Fingerprinting

Budget v. Actual

Fiscal Year 2007

TOTAL

	<u>Jul '06 - Jun 07</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Total Expense	<u>333,863.88</u>	<u>379,666.83</u>	<u>-45,802.95</u>	<u>87.94%</u>
Net Income	<u><u>470,231.64</u></u>	<u><u>542,083.47</u></u>	<u><u>-71,851.83</u></u>	<u><u>86.75%</u></u>

Arizona Board of Fingerprinting Strategic Plan

Goal 1. To make fair and consistent determinations on good-cause-exception applications.					
	FY 2007 Estimate	FY 2007 Actual	FY 2008 Estimate	FY 2009 Estimate	FY 2010 Estimate
Percent of investigator recommendations for expedited reviews accepted	98.00%	93.81%	93.00%	93.00%	93.00%
Percent of applications approved	65.29%	92.73%	80.00%	80.00%	80.00%
Percent of approvals by expedited review	70.00%	81.65%	75.00%	75.00%	75.00%
Percent of approvals by administrative hearing	30.00%	18.35%	25.00%	25.00%	25.00%

Goal 2. To provide applicants with timely decisions on their good-cause-exception applications.					
	FY 2007 Estimate	FY 2007 Actual	FY 2008 Estimate	FY 2009 Estimate	FY 2010 Estimate
Number of applications received	2,046	1,967	2,365	2,734	3,160
Number of applications disposed	2,046	1,627	2,365	2,734	3,160
Ratio of cases opened to cases closed	1:1	1:1.83	1:1	1:1	1:1
Average number of days to dispose	70	115.84	63	55	50
Average number of days spent processing application	47	82.38	42	37	32
Average number of days spent processing application from receipt to expedited review	35	24.84	20	20	20
Percent of applications that undergo an expedited review within 20 days (processing time)	80.00%	39.66%	100.00%	100.00%	100.00%
Average days from expedited review to hearing	55	61.7	40	35	35
Percent of applications heard within 60 days of expedited review	60.00%	47.11%	100.00%	100.00%	100.00%

Percent of applications decided within 60 days of hearing	75.00%	17.33%	90.00%	90.00%	90.00%
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Goal 3. To develop fair and comprehensible rules, policies, and procedures, for determining good cause exceptions.					
	FY 2007 Estimate	FY 2007 Actual	FY 2008 Estimate	FY 2009 Estimate	FY 2010 Estimate
Number of requests received	3,207	3,236	3,405	3,616	3,840
Ratio of requests for good cause exceptions to applications submitted	1:1.65	1:1.61	1:1.70	1:1.70	1:1.70
Percent of applications complete on initial submission	45.00%	37.30%	45.00%	50.00%	55.00%

Arizona Board of Fingerprinting

Memo

TO: Board members and alternates

FROM: Dennis Seavers

C:

Date: August 13, 2007

SUBJECT: FY 2008 Budget



At an August 24, 2007 open meeting, the Board will consider the enclosed proposal for the Board's fiscal year ("FY") 2008 budget. This memo summarizes the changes between the FY 2007 and 2008 budgets and highlights notable areas of spending.

Revenues

The proposed budget assumes that the Board will receive \$302,589 in fee-based revenues. This projection is based on FY 2007 revenues, which were lower than anticipated. (The Board's FY 2007 budget assumed that DPS would receive 120,000 fingerprint-clearance-card applications. However, DPS received just over 100,000.)

In addition to estimated revenues of \$302,589, the Board will carry forward a fund balance of \$470,231.64 from FY 2007.¹

Expenditures

In FY 2007, the Board spent \$333,863.88. Under the proposed budget, in FY 2008, the Board would spend \$566,741.13.

Much of the increased spending is due the addition of two new staff positions and related expenses. The Board approved the increased spending at its April 20, 2007, meeting. For the purpose of developing a conservative budget, the proposed budget assumes that Board employees will take advantage of the highest level of benefits available, even though actual employee-related expenditures will likely be lower.

In addition to the increased expenses due to new staff positions, the FY 2008 budget reflects \$15,000 in information-technology expenses. These expenses, which include database improvements, were approved for the FY 2007 budget. However, due to the imposition of time frames on the Board and a court case that affected the Board's business process, the database upgrades were delayed until the Board could adopt a business process that reflected the impact of the time frames and court case.

¹ Under A.R.S. § 41-619.56(B), monies in the Board of Fingerprinting Fund are non-lapsing, so the Board carries forward its fund balance from fiscal year to fiscal year.

Finally, the increase includes \$6,500 to purchase a new photocopier/scanner. The Board's current copier is breaking down more frequently. In addition, the scanning feature of the new copier would significantly save the administrative assistants time spent preparing scanned files for hearings.

Revenues versus expenditures

Under the proposed budget, spending would outstrip revenues by \$264,152.13. The Board's fund balance from FY 2007 would cover the deficit. The Board would end the fiscal year with a fund balance of \$206,079.51.

As discussed in its April 20, 2007, meeting, this deficit would eventually require the Board to change its fee, perhaps by the end of FY 2008. The Board may need to increase its portion of the fee by \$2.00, if revenues remain at the same level as FY 2007.

Arizona Board of Fingerprinting

Fiscal Year 2008 Budget

	<u>Jul '08 - Jun 09</u>
Income	
4900 - Transfers In	
4901 - Operating Transfers In	302,589.00
Total 4900 - Transfers In	302,589.00
FY07 Carryover	470,231.64
Total Income	772,820.64

Expense	
6000 - Personal Services	279,611.58
6100 - ERE	106,505.89
6200 - Prof. & Outside Services	
6210 - Financial Services	
6211 - Bond Issuance Cost	1,653.00
Total 6210 - Financial Services	1,653.00
6270 - Education & Training	
6271 - Education & Training	32.00
Total 6270 - Education & Training	32.00
6290 - Other Prof. & Out. Svcs.	
6299 - Other Prof. & Out. Svcs.	15,450.00
Total 6290 - Other Prof. & Out. Svcs.	15,450.00
Total 6200 - Prof. & Outside Services	17,135.00
7000 - Other Operating	
7150 - IT Services	
7153 - Internal Svc. Data Proc.	8,400.00
7172 - External Comm. Long Dist	10,800.00
7179 - Other External Comm.	3,100.00
Total 7150 - IT Services	22,300.00
7200 - Rental Expenditures	
7221 - Rental of Land & Bldgs.	60,004.66
7229 - Miscellaneous Rent	344.00
Total 7200 - Rental Expenditures	60,348.66
7250 - Repair & Maintenance	
7266 - Repair/Maint-Other Equip	1,240.00
7269 - Repair & Maint (Other)	6,000.00
Total 7250 - Repair & Maintenance	7,240.00
7300 - Operating Supplies	

Arizona Board of Fingerprinting

Fiscal Year 2008 Budget

	Jul '08 - Jun 09
7321 - Office Supplies	15,000.00
Total 7300 - Operating Supplies	15,000.00
7450 - Conf, Edu, & Training	
7455 - Conf, Edu, & Train Regis	1,400.00
Total 7450 - Conf, Edu, & Training	1,400.00
7470 - Printing & Photography	
7471- Internal Printing	400.00
Total 7470 - Printing & Photography	400.00
7480 - Postage & Delivery	
7481 - Postage & Delivery	15,000.00
Total 7480 - Postage & Delivery	15,000.00
7500 - Miscellaneous Operating	
7511 - Awards	500.00
7541 - Books, Subscr., & Pubs.	11,400.00
Total 7500 - Miscellaneous Operating	11,900.00
Total 7000 - Other Operating	133,588.66
8500 - Non-capital Equipment	
8520 - Furniture Non-cap	
8521 - Furniture Non-capital	15,000.00
Total 8520 - Furniture Non-cap	15,000.00
8550 - EDP Equip PC/LAN Non-cap	
8551 - EDP Equip. Non-cap Purch	11,500.00
Total 8550 - EDP Equip PC/LAN Non-cap	11,500.00
8580 - Non-capitalized Software	
8583 - PC/LAN Software Non-cap.	2,400.00
Total 8580 - Non-capitalized Software	2,400.00
Total 8500 - Non-capital Equipment	28,900.00
9100 - Transfers Out	
9101 - Operating Transfers Out	1,000.00
Total 9100 - Transfers Out	1,000.00
Total Expense	566,741.13
Net Income	206,079.51

A.A.C. R13-11-101. Applicability

This Article applies to activities and persons identified in A.R.S. Title 41, Chapter 3, Article 12, except that R13-11-111 applies to all persons applying to the Department of Public Safety for a fingerprint clearance card ~~pursuant to~~ UNDER A.R.S. § 41—1758.03.

A.A.C. R13-11-102. Definitions

In this Article, the following definitions apply, unless the context otherwise requires:

1. “Appellant” means a person whose application for a fingerprint clearance card is denied or whose fingerprint clearance card is suspended by the Department; who is eligible to request a good cause exception from the Board ~~pursuant to~~ UNDER A.R.S. § 41—1758.03; and who submits a request ~~pursuant to~~ ACCORDING TO R13-11-103(A).
2. “Applicant” means a person who applies for a fingerprint clearance card ~~pursuant to~~ UNDER A.R.S. § 41—1758.03.
3. “APPLICATION” MEANS ALL OF THE DOCUMENTS REQUIRED BY A.A.C. R13-11-104(A).
- 3 4. “Board” means the Board of Fingerprinting.
- 4 5. “Department” means the Department of Public Safety.
- 5 6. “Department’s notice” means the notice of denial or suspension of a fingerprint clearance card that the Department sends to an applicant ~~pursuant to~~ UNDER A.R.S. § 41—1758.04.
- 6 7. “Expedited review” means an examination, in accordance with Board rules, of the documents an appellant submits by the Board or its hearing officer without the appellant being present.
- 7 8. “Good cause exception” means the issuance of a fingerprint clearance card to an appellant ~~pursuant to~~ UNDER A.R.S. § 41—619.55.
- 8 9. “Hearing officer” means an administrative law judge or other person ~~hired~~ APPOINTED by the Board, ~~or if an agreement exists between the Board and the Office of Administrative Hearings, appointed by the director of the Office of Administrative Hearings,~~ to determine good cause exceptions.
9. ~~“Office” means the Office of Administrative Hearings.~~
10. “Request” means a person’s written indication to the Board that he or she wishes to appeal for a good cause exception ~~pursuant to~~ UNDER A.R.S. § 41—619.55, along with a copy of all pages of the Department’s notice. A person’s dated signature on the Department’s notice shall suffice as a written indication.

A.A.C. R13-11-103. Request for good cause exception

- A. A person who meets the requirements of A.R.S. § 41—1758.03 and wishes to apply for a good cause exception shall submit a request to the Board within 30 calendar days of the date on the Department’s notice.
- B. The Board shall send an application package within five business days to an applicant if one of the following applies:
 1. The applicant meets the requirement of R13-11-103(A).

2. With good cause, the applicant submits a request in excess of 30 calendar days of the date on the Department's notice. An applicant demonstrates good cause by showing that the request could not have been submitted on time, using reasonable diligence. An applicant's failure to inform the Department of a change in address shall not constitute grounds for good cause. The Board's executive director shall determine whether good cause exists.
3. The applicant submits an incomplete request within 30 days of the Department's notice and subsequently completes the request. The Board shall determine a request incomplete if the request lacks one of the following:
 - a. A written indication that the applicant wishes to appeal for a good cause exception pursuant to UNDER A.R.S. § 41-619.55, or
 - b. The Department's notice or any of its pages.
- C. Within five business days, the Board shall send a notice to an applicant who submits an incomplete request. The notice shall indicate that the request is incomplete and what elements of the request are missing.
- D. The Board shall reject an applicant's request for a good cause exception and send a written notice of rejection within five business days if one of the following applies:
 1. The applicant submits a request in excess of 30 days of the date on the Department's notice, except as provided for in R13-11-103(B)(2).
 2. R13-11-103(B) notwithstanding, the applicant is not eligible to request a good cause exception under A.R.S. § 41-1758.03.

A.A.C. R13-11-104. Good Cause Exception Application

- A. An appellant shall submit the following materials to the Board to establish good cause for an exception:
 1. The good cause exception application form prescribed by the Board. This form shall be notarized.
 2. Two letters of reference on forms prescribed by the Board that meet the following requirements:
 - a. Both letters of reference shall be from individuals who have known the appellant for at least one year; and
 - b. At least one letter of reference shall be from the appellant's current or former employer or from an individual who has known the appellant for at least three years.
 3. If the Department's notice indicates that the Department could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the appellant either do not exist or have been purged.
 4. For any ~~arrests~~ CHARGES that occurred five years or less prior to the date on the Department's notice, regardless of whether the ~~arrests~~ CHARGES were listed on the Department's notice, the police report for each ~~arrest~~ CHARGE and documents from the appropriate court showing the disposition of the charge.
 5. For every criminal conviction, regardless of whether the offenses were listed on the Department's notice, documents from the appropriate court showing that the

appellant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the appellant either do not exist or have been purged. If the appellant has not met all judicially imposed obligations or sentencing conditions, the appellant shall provide a written statement indicating or documents from the appropriate court showing the status of the appellant's efforts toward meeting the obligations.

6. A statement written by the appellant that explains each ~~arrest~~ CHARGE, regardless of whether the ~~arrests~~ CHARGES were listed on the Department's notice.
- B. The Board OR ITS HEARING OFFICER ~~shall~~ MAY accept any other documents an appellant submits to demonstrate good cause for an exception.
- ~~C. A good cause exception application shall be complete if it meets all the requirements of R13-11-104(A). A good cause exception application shall be incomplete if it does not meet all the requirements of R13-11-104(A).~~

A.A.C. R13-11-105. Expedited Review

- A. Within ~~30~~ 20 business days of receiving a AN ~~complete~~ application package, the Board or its hearing officer shall conduct an expedited review. When determining whether the appellant should receive a good cause exception under an expedited review, the Board or its hearing officer shall consider the following:
 1. The criteria listed in R13-11-108(A); and
 2. Whether the documentation submitted in support of a good cause exception is sufficient to allow the Board or its hearing officer to grant a good cause exception, or whether the Board or its hearing officer require further documentation or oral testimony.
- B. If the Board or its hearing officer ~~determine~~ DETERMINES that the appellant is eligible for a good cause exception under an expedited review, the Board or its hearing officer shall grant the appellant a good cause exception.
- C. If the Board or its hearing officer determines that an appellant is not eligible for a good cause exception under an expedited review, the Board or its hearing officer shall direct the Board's executive director to schedule, ~~or request that the Office schedule,~~ a hearing ~~and inform the appellant of the determination in writing.~~ The Board's executive director shall give the appellant reasonable notice of the hearing in accordance ~~with the provisions of A.R.S. § 41-1061.~~ THE HEARING SHALL TAKE PLACE WITHIN 45 DAYS AFTER THE EXPEDITED REVIEW.

R13-11-108. Hearings

- A. When determining whether an appellant should receive a good cause exception at a hearing, the Board or its hearing officer shall consider whether the appellant has shown to the Board or its hearing officer's satisfaction that the appellant is not awaiting trial on or has not been convicted of committing any of the offenses listed in A.R.S. § 41-1758.03 or that the person is successfully rehabilitated and is not a recidivist. The Board or its hearing officer shall consider the following:
 1. The extent of the appellant's criminal record;

2. The length of time that has elapsed since the offense was committed;
 3. The nature of the offense;
 4. Any applicable mitigating circumstances;
 5. The degree to which the appellant participated in the offense; and
 6. The extent of the appellant's rehabilitation, including:
 - a. Completion of or progress toward completing probation, parole, or community supervision;
 - b. Completion of payment or progress toward paying restitution or other compensation for the offense;
 - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling;
 - d. Personal references attesting to the appellant's rehabilitation; and
 - e. Witness testimony ~~that the appellant submits~~.
- B. Absent good cause, if the appellant or his or her representative fail to appear at a hearing, the Board or its hearing officer ~~shall proceed with the hearing and~~ MAY deny the applicant a good cause exception for failure to appear at the hearing. An appellant demonstrates good cause by showing that the appellant could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-106, using reasonable diligence. An appellant's failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board or its hearing officer shall determine whether good cause exists.
- C. THE BOARD OR ITS HEARING OFFICER SHALL GRANT OR DENY A GOOD CAUSE EXCEPTION WITHIN 80 DAYS OF THE HEARING.

R13-11-110. Rehearing or Review of Decision

- A. An appellant may seek a review or rehearing of a Board OR HEARING-OFFICER decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board OR ITS HEARING OFFICER ~~must~~ SHALL grant a request for review or rehearing for any of the following reasons materially affecting the rights of the appellant:
1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
 2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
 3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
 4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.
- B. The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the appellant's rights were materially affected.
- C. The Board OR ITS HEARING OFFICER may grant a rehearing or review for any of the reasons in subsection A. The Board or its hearing officer may take additional

testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.

- D. A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

R13-11-111. Notification of Decision for Good Cause Exception

- A. The Board shall notify the appellant in writing of the ~~Board's~~ BOARD OR ITS HEARING OFFICER'S decision and, ~~if the good cause exception is granted at a hearing,~~ transmit findings of fact and conclusions of law.
- B. When the Board or its hearing officer ~~grant~~ GRANTS a good cause exception, the Board's executive director shall request, in writing, the Department to issue a fingerprint clearance card.